CHAPTER 4.
PROPOSALS FOR CHANGE AND REFORM

"I hope within a period of months rather than years there will be another dominion added to the commonwealth of Nations, a Dominion of another race, a Dominion which will find respect as an equal within the commonwealth, I refer to India."

--Ramsay Macdonald. 1

With the appointment of the Indian Statutory Commission under the chairmanship of Lord Simon in 1928 to examine and report the constitutional changes necessary for India and the relaunching of the non-cooperation movement by the Congress in 1929, public interest in the proceedings of the Central Legislature declined. The Council of State, however, continued in that form till it was abolished in 1947 as a result of the Indian Independence Act of 1947. In the meanwhile, great progress was made in direction of a new constitution for India. Between 1928 and 1935 several schemes were put forward for a new constitution and therefore, for a new kind of Second Chamber at the centre in India. The main recommendations of different bodies such as the All parties Conference (1928) (otherwise known as the Nehru Committee Report), the Report of the Indian Central Committee, 1929, (also known as Sankaram Nair Committee), proposals of the Government in 1930 (Simon Commission), and the Government of India Act 1935, in so far as they relate to the future of Council of State as an upper chamber in India, are examined here.

1 Address of Ramsay Macdonald at a conference of Commonwealth Labour parties.
While the joint authors of the Reforms scheme of 1919 had hinted at the ultimate formation of a federation in India, they had scrupulously avoided the forcing of the step in any manner. Hence the Council of State under the Act of 1919 was essentially a Second Chamber of a unitary State in which the Central Legislature was at best a Subordinate legislation advisory body. And in such a scheme it was not strange that the Council of State was deliberately made a conservative and reactionary body to be at the beck and call of the powerful and irresponsible Executive. Even the quite a large proportion of the Central budget was made non-votable. The representation of the provinces in the Council of State was no doubt province-wise, the manner and method of its composition and the presence of nominated members who were for all practical purposes the "safe votes" of the government prevented completely the setting up of a tradition for the Council to represent the viewpoint of province as corporate bodies. On the otherhand, if there was any place where provincialism now and then manifested itself, it was in the Assembly where on any question the settlement of which might be to the advantage of its province or that, even the elected members including those of the Swaraj party, voted in the interest of their respective provinces. The most conspicuous example of this was the debate and voting on the question of the location of the Central Clearing Office of the East Indian Railway, on the motion of the government to remove it from Calcutta. The members from the United Provinces voted for Allahabad, those from the Punjab for Lahore, others for Delhi and those from Bengal and Assam stoutly opposed the shifting of the office from Calcutta. No one can deny the fact that the spirit of provincial patriotism had been encouraged
by the working of the Act of 1919, a spirit essential to the for-

mation of a federation. But that spirit still remained secondary
in Indian politics on account of the problem of wresting political
power from British hands occupying the main attention of the
public man in India. Hence the working of the Council of State
did not evoke any special attention as a Second Chamber in any
eventual establishment of a federation.

When the British Government rejected the demand of the
Legislative Assembly for the drawing up of a new constitution for
a fully self-governing India, public resentment grew beyond all
measure. In appointing the Simon Commission, Lord Birkenhead,
the conservative Secretary of State for India had hurled an in-
solvent challenge to leaders of public opinion in India to pro-
duce an agreed solution of the Indian Constitutional problem. The
Indian National Congress under the presidency of Dr. M.A. Ansari
accepted the challenge and convened an All parties conference at
Bombay. This conference in its resolution of March 19, 1928,
appointed a committee "to consider and determine the principles
of the constitution of India", under the chairmanship of Pandit
Motilal Nehru. This committee of nine members included in it
two moslems and one sikh. Besides, Pandit Nehru, the Chairman,
other members were: Sir Tej Bahadur Sapru, Sir Ali Imam,
Mr. Pradhan, Mr. Shuah Qureshi, Mr. Subhash Chandra Bose,
Mr. Madhava Rao Aney, Mr. M.R. Jyakar, Mr. N.M. Joshi and
Bardar Mangal Singh. At all parties conference at Bombay, practi-
cally all public bodies and institutions which had anything to
do with political questions were represented. The Committee
held its sittings mostly at Allahabad and after mature delibe-
rations submitted its Report (commonly known as the Nehru Report)
embodied the essential principles of a constitution for the commonwealth of India, the name they suggested for the polity of India. The Report was considered by the All parties Conference held at Lucknow on August 28 to 31, 1922, and its slight modifications adopted. The Nehru Committee accepted federation as the aim of the Constitution. The Committee in its Report held that the Indian Constitution should be based on full responsible government on the model of self-governing dominions, making it clear that the attainment of Dominion Status was not viewed as a remote stage of our evolution but as the next immediate step.

Both at the Centre and in the provinces the incentive was to be under the complete control of the legislature. The Committee looked upon federation as a possibility. It, however, did emphasize the need of autonomy for the provinces.

We are here concerned with that part of the recommendations which related to the Central legislature. The Report said, "We are of the opinion that the Central legislature should be bicameral, consisting of a Senate and the House of Representatives." For the Senate the committee recommended a strength of 200 members and for the House 500 members. In regard to the franchise and the system of election they proposed a direct election of the members of the House on the widest possible franchise, without allowing arguments to the contrary on account of the prevailing illiteracy in the country, for they felt that "Political experience can only be acquired by an active participation in political institutions and does not entirely depend on literacy.

2 Nehru Committee Report, p. 82 "But if the Constitution of India is to be federal, as we think it might well be...."
3 Ibid p. 91.
4 Ibid.
There should be equal opportunities for all to acquire this experience. As regards the vexed question of community representation the Nehru Report was the frankest attempt yet made by Indians to face squarely the difficulties of communalism. "We cannot have one community domineering over another," declared the authors of the Report. It condemned separate electorates on the ground that they perpetuated communal antagonisms and defeated their own professed purpose of giving genuine security to the minorities. Consequently they could be given no place in any system of representation in national interests. The Report recommended joint electorates with reservation of seats for the minorities in proportion to population.

As regards the Senate they recommended that "the electorates should be the legislatures of the provinces, a specific numbers of seats being allotted to each province, the basis being population, subject to a minimum." In support of the recommendation regarding such a Senate they said that "an upper House if directly elected can neither be based on a narrow and restricted franchise or on as wide a franchise as applies to the Lower House. In the latter case it becomes merely a duplicate of the Lower Chamber and is totally unnecessary; in the former, it represents only a small section of the community and there is always a tendency to create deadlocks and friction. There is no justification whatever for a second chamber consisting of obscurantists and people belonging to special classes

5 Nehru Report p. 94.
6 Ibid.
whose chief aim is to protect their own interests and obstruct all liberal measures. The only justification for it is that it ensures the reconsideration of all measures emanating from the Lower House in somewhat calmer atmosphere and more dispassionately than is likely to be the case in the lower house when controversial matters are discussed. This is specially necessary in India owing to the existence of communal feelings. Direct election to the Senate can thus only result in either a replica of the lower house or in producing a reactionary body representing some vested interests only. The method of indirect election we have suggested gets over this difficulty. The electorate consisting of people presumably of a fairly high degree of intelligence, there is some chance that the right kind of men may be chosen, men who may not care to face the shouting and the tub-thumping which a modern democratic election which a wide-electorate involves.

Their electorate, although restricted, will not be based on status or vested interests or class. It will presumably reflect the temper of the mass electorate in the country. There will be a greater chance of a minority and other special interests to be represented, specially, as we recommended if the election for the Senate takes place by the system of proportional representation.

The Committee found another advantage in the method of election namely, provinces as such would be directly represented in the Central Legislature and provincial view points would be expressed in the Senate. Such an arrangement the Committee thought, was

7 The hint is at the Council of State than in existence in India which they considered as reactionary and obstructionist.
8 Nehru Report pp. 94-96.
9 Ibid p.95.
specially desirable to coordinate the provincial legislatures with the central legislature and to promote the harmonious working of the constitution. They prescribed for each province a quota of members in the Senate, more or less on population basis subject to a minimum. While they took into consideration the practice existing in other federations particularly in U.S.A. to give each unit the same number of members in the Senate they said that in view of the great difference in size and population of Indian provinces the principle of equal representation would not be desirable but the differences between the representation of one province and another in the Senate should not also be wholly disproportionate. In other words they did not advocate the equality of representation of all provinces in the Senate but they admitted its federal character by emphasizing the necessity of representing the view points of provinces. The Committee also envisaged the Senate to be a body of experienced and specially responsible persons, unswayed by gusts of popular and unrestricted zeal.

**DURATION AND PROCEDURE AND POWERS OF THE SENATE:**

Regarding the life of the legislature they suggested a five year term for the House and seven years for the Senate. Either chamber could be dissolved sooner by the Governor-General or its term extended in special circumstances. Questions in each house were to be decided by a majority of votes, the Presiding officer casting vote in the case of a tie only.

10 Ibid.
11 Ibid. Sec. 10(1) p.104.
12 n Ibid. 9(4) p.105.
Each House was to elect a president and a vice-president from amongst its members. Any bill except a money bill could originate in any House. The Governor-General could require the reconsideration of any measure presented to him after passage through both houses. A money bill could originate only in the lower house and be sent to the Senate after passage. In case the Senate did not return it within the specified period either after accepting or amending it the House could pass it and it was deemed and it would be deemed to have been passed by both chambers. In case of disagreement between the two Houses on any bill other than a money bill it was provided that if such a bill was not passed by the Senate within six months from the date of its passage by the House of representatives the Governor-General should, on a resolution passed by either chamber, refer the matter to a joint sitting of both Houses.

This plan of the bicameral legislature recommended by the Nehru Committee evidently proposed the second chamber which was to play only a second role in the federal legislation, more particularly because its power over finances followed practically the one existing in India. It recommended an executive responsible to the House of Representatives and as such the second chamber could not be but just a revising chamber. Even in the case of a joint sitting of the two Houses the disparity in the strength of the two bodies left the Senate to play only a second fiddle. The supreme merit of the Nehru plan was the election of Senators

13 Ibid.
by the provincial legislatures, a position which existed in the constitution of the United States of America regarding the election of Senators till 1913 before the Seventeenth amendment was passed.

The Government of India Act of 1919 had stipulated the appointment of a Statutory Commission at the end of ten years to enquire into the working of the Montford Reforms and to report how far India was ready for a further advance towards responsible self-government. For political reasons this Commission was appointed two years ahead of the schedule and an announcement was made on November 26, 1927 by Lord Birkenhead, the Secretary of State for India. At the same time the Government of India appointed the Central Committee under the chairmanship of Sir C. Sankaran Nair, to go into the working of the reforms and make recommendations about the next stage in the development of the responsible government of India.
The Indian Central Committee under the chairmanship of Sri C. Sankaran Nair submitted its report on 18th October 1929. The Committee was required specially to report upon the question whether the establishment of Second Chambers of the local legislatures was or was not desirable. It, therefore, examined the pros and cons of the problem as it related to both the centre and the state thoroughly and made certain observations and recommendations. The Committee therefore concluded that Second Chamber in the provinces was unnecessary at that time and might give rise to practical difficulties. They, however, made an exception in the case of united provinces where the existence of a landed aristocracy provided suitable material for a Second Chamber and proposed the creation of such a chamber in that province tentatively for a period of ten years and the expiry of which they suggested the method should be further considered.

**RECOMMENDATIONS REGARDING THE COUNCIL OF STATE:**

The Committee proposed that the strength of the Council of State should be increased from 60 to 100 and that the seats should be distributed among the various communities and interests in the same proportions as already existing. They further recommended that the existing proportion between elected and nominated seats should be maintained. No further changes were suggested in the constitution of the Council of State.

15 Ibid. p.53.
The Committee expressed the fear that the retention of the Council of State without any change in its powers might appear somewhat incongruous with the revised constitution they had proposed for the Government of India. But they felt that while on one hand it was unlikely that the use of the special and somewhat drastic powers of the council would be invoked by the responsible Government of India, on the other hand the existence of those powers might prove a valuable safeguard in contingencies which could not be foreseen. They, therefore, felt no legislation in recommending the retention of powers equally drastic to deal with such eventualities. 16

Sir Arthur Froom, a member of the Committee, in a minute of dissent affixed to the main Report expressed his conviction that Second Chambers with revisionary powers would make an advance towards self-Government in the province, the more practical proposal. He suggested that the Second Chamber should be permanent to secure continuity. 17

Sir Hari Singh Gour, another member, however, strongly criticised the constitution and the powers of the existing Council of State. "We are not able to advise the retention of the Council of State in its present form," he said, "and we would suggest that radical changes be made to ensure that the body entirely answers the purposes for which the second chamber has been devised in the other constitutions of the world." 18

17 Ibid, p.265.
18 -do- (Memorandum by Sir Hari Singh Gour) p. 315.
Mr. Kika Bhai Premchand, another member, made a special recommendation regarding the constitution of the Council of State, that of the nominated members 6 should be appointed by the Viceroy and should include the members of the Viceroy's Council and 14 nominated by him on the recommendation of the provincial Governments. The balance of 14 seats would be filled by the Viceroy from the non-official members of the community. 19

SIMON COMMISSION AND ITS RECOMMENDATIONS

The Indian Statutory Commission under the chairmanship of Lord Simon was appointed in 1927 20 two years ahead of the schedule, as already pointed out earlier and it submitted its Report in the summer of 1930. It was unfortunate that its appointment was considered an affront to India as it was to have no Indian as its member. "The Simon seven were all Englishmen." The commission based its recommendations definitely on the supposition of the immediate establishment of Indian Federation of all British India with the possibility of the Indian States joining the Federation of a later date. But the Commission made a very novel recommendation in regard to the composition and powers of the Federal Legislature.

19 Report of the Indian Central Committee, p.448 (Report by Kika Bhai Premchand)
20 As the invitation of the Viceroy, Mahatma Gandhi hastened from Mangalore and travelled a thousand miles only to find that Lord Irwin had no more business with him than to put in his hand a sheet of paper announcing the appointment of the Statutory (Simon) Commission. The Mahatma remarked bitterly that the Viceroy could have sent him the information in one-anna envelope, but the event was destined to be a turning point in Indian History.
21 C.Y.Chintamani: Indian Politics Since the mutiny, p.171.
It recommended the constitution of a new body called the "Federal Assembly" consisting of members of elected not directly by the constituencies of voters, but elected by the provincial legislatures, by the method of proportional representation. A candidate was to be a voter to the provincial council as well as of the Federal Assembly. He was to receive allowances from his province. Each provincial Council after its election was first to elect the provincial contingent to the Federal Assembly. The term of the Federal Assembly was to be raised to five years.\(^{22}\)

**RECOMMENDATION REGARDING THE COUNCIL OF STATE:**

The Commission believed, quoting the evidence before them that the Council of State had played a very useful part in the evolution of the representative Government of India.\(^{23}\) They, however, admitted that the principle on which they recommended the composition of the Federal Assembly was to some extent the senatorial principle in so far as the members were elected by the federal units through their legislatures. The institution of Committee system on which each province would be equally represented, they said, would make it unnecessary theoretically the retention of the Council of State. Further with the accession of the Indian States to the Federation "it would clearly be enormous to retain, indefinitely, a second Chamber, representation of the elements of British India alone, to revise the decisions of an all India Assembly."\(^{24}\) They found difficulties (of selection etc.) in suggesting the addition of ruling princes or


\(^{23}\) --Do-- p. 124.

\(^{24}\) --Do-- para 147.
their representatives to the second Chamber. In any case it was premature to express any definite opinion on such a proposal.

REASONS FOR THE RETENTION OF THE COUNCIL OF STATE:

The Commission found weighty reasons for the retention of the Council of State as an integral part of Central Government. "It contains members of experience and distinction who have made valuable contributions to the discussions of public affairs. The Council of State had been a steady influence during a difficult transitional period. They were also impressed by the fact that no demand for the abolition of the Council of State had been brought to their notice. The Commission rightly pointed out to the need for India having all the resources of statesmanship and experience especially at the stage upon which she was then entering. They, therefore, categorically recorded their higher appreciation of this institution and, recommended its retention with the existing powers.26

COMPOSITION OF THE COUNCIL OF STATE:

The Commission proposed that the members and the proportions between elected and non-elected should be left unchanged. Pointing out the difficulties regarding its composition they, however, admitted that they had no constructive suggestion and should desire, therefore, not to do more than to indicate a possible composition of the Council of State.27 They recommended that each Governor's Province should have three

25 Ibid. para 148.
26 Ibid.
27 Ibid. para 149
members (on the principle of equality) and the minor provinces, N.W. Frontier Province, Delhi to have one member each and one to be selected in turn from Baluchistan, Ajmer-Nerwara and Coorg. The members from the provinces were to be elected by the Provincial Second Chambers (Wherever they existed) otherwise by the provincial councils, a similar method of proportional representation to that used in the elections to the Federal Assembly being employed.

**QUALIFICATIONS FOR MEMBERSHIP:**

They held the view that certain qualifications should be laid down for candidates with a view to securing the possession by them of experience and status. They should be such as to bring to the Council of State the qualifications of distinction, leadership, authority and experience. There should be no such disqualification for membership of the Council of State.

**DURATION AND POWERS OF THE COUNCIL OF STATE:**

Consequent on their proposal to extend the life of the assembly from 3 to 5 years, they recommended that the Council of State should be elected at the same time as the new Federal Assembly but should have a life of 7 years as the accepted position in most constitutions was to give the second chamber a longer life than that of the Lower House. After the first election the two Houses would be reconstituted at different intervals. The powers of the two Houses, the Federal Assembly and the Council of State, were generally to be those of the Assembly and of the Council of State respectively, under the Act of 1919.28

Such was the scheme of the Council of State proposed by the Statutory Commission, which seems to have believed in a unicameral legislature for the federation but was hesitant to make a clear recommendation to that effect. Contrary to the practice prevailing in other Federations, the lower Chamber, the Federal Assembly (as the Commission called it) was to be the representative of the units as such. No representation to the people of units was recommended. But the principle of equality of units was recommended for the composition of the Council of State. The scheme of Federal legislature, as recommended by the commission, was undoubtedly defective. The recommendations of the commission were generally rejected by the joint Parliamentary Committee and the British Parliament in respect of the second chamber as will be shown later.

GOVERNMENT OF INDIA'S VIEWS ON THE STATUTORY COMMISSION:

The Government of India expressed the view that the prospect of a unicameral central legislature made very little appeal and added that the structure of the Council of State had attracted little attention. It was true that the Nehru Report proposed to compose it through indirect elections by the Provincial Councils after the method of proportional representation but the general trend of provincial opinion left the body much as it was. They generally agreed with the Commission with regard to the composition and the powers of the legislature and the relations between the two Houses.

THE NEED FOR A STRONG SECOND CHAMBER:

The Government of India strongly believed that the danger of hasty and ill-considered legislation would long continue in India and that a second Chamber would always be required as an element in Indian Legislature. The Government could not expect that harmony between the executive and the Lower House would always prevail and had reason to believe that the merits of the administrative policy might not invariably receive that consideration which the executive would desire. "It is of importance, therefore," the Report said, "that there should be a second chamber so constituted as to be able to give to the Executive reasonable and discriminating support. Again the Governor-General would continue to be charged with the duty of securing these purposes which would be the concern of Parliament and it was desirable that, as far as possible, those powers should not be brought into play in opposition to the wishes of the Assembly until the decisions of that body had been viewed by the calmer judgement of the Council of State."

Regarding the composition of the House, Government felt that the existing method of returning members by direct election was successful and they preferred to retain the system, though they had no objection to accept the proposal of the Statutory Commission. The functions of such a chamber as conceived by them, were those of a revising chamber capable of exercising in relation to the popular chamber a restraining chamber though not

30 Government of India’s dispatch on proposals for Constitutional Reforms. (No. 1 of 1930, date 20, September 1930) p.128.
31 Ibid.
an overriding influence and its composition was a corollary of its functions. The Government of India, however, considered it desirable that for some time longer the central Government should be able to count on support from the Upper Chamber. For that reason it was essential that the Council of State should remain a body of conservative disposition. They could, therefore, retain the power possessed by the Governor-General to make nominations both of officials and non-officials, observing that the Governor-General was at present under no obligation to nominate the maximum number of officials and indeed in practice nominated a smaller number. They agreed also with the proposal of the Statutory Commission that the life of the Council of State should be 7 years.

ROUND TABLE CONFERENCE:

All the material till then available on the subject of the future of the constitutional reform was subjected to critical examination at the Round Table Conference in London to which the Representatives of British India, Indian States and the British Government were invited. The ruling princes having agreed to the project of an All India Federation, the whole question was examined anew. In the first session of the Round Table Conference (12th November, 1930 to 19th January, 1931) all the aspects of The Federal Legislature were thoroughly discussed. The general view expressed was that the Lower House should consist of 300 members, the States getting 100 and the Council of State should consist of 150 members, the States getting 40 per cent of the seats. Nomination of members to either House was generally opposed as the representatives from
British India expressed complete disapproval of the way the Council of State, particularly had worked. As regards the conflicts between the two Houses it was generally agreed that there should be a joint session and the majority vote should prevail. The British Government considered all these decisions and issued a White paper embodying their own draft for the constitution of an All India Federation and joint committee of the two Houses of the Parliament was appointed to examine the question along with the proposals of the Indian Constitutional Reform. The Joint Select Committee held 159 meetings and examined 120 witnesses from India and England on the various proposals and submitted its Report to Parliament which was published on 31st October 1934.

**VIEWS OF THE JOINT PARLIAMENTARY COMMITTEE ON INDIAN CONSTITUTIONAL REFORMS RELATING TO THE SECOND CHAMBER**

The **White Paper of December 1931**.

Proposal in the White Paper relating to the Legislature:

The White Paper of 1931 proposed that the Federal Legislature should consist of the thing, represented by Governor-General and the two chambers, to be styled the Council of State and the House of Assembly.

The Council of State would consist of not more than 260 members, of whom 150 would be representatives of British India, not more than 100 would be appointed by the Rulers of the state who accede to the Federation and not more than 10 would be nominated by the Governor-General in his discretion.
The representatives of British India in the Council of State would, to the number of 136 be elected by the members of the provincial legislatures, by the method of the single transferable vote, Indian Christian, Anglo-Indian and European members of the provincial legislatures would not be entitled to vote for these representatives but 10 non-provincial communal seats would be reserved for them. (7 for Europeans, 2 for Indian Christians and one for Anglo-Indians). These seats being filled by three electoral Colleges, consisting respectively of the European, India Xian and Anglo-Indian members of the Provincial Legislatures. 32

JOINT PARLIAMENTARY COMMITTEE'S PROPOSAL TO RETAIN THE BICAMERAL LEGISLATURE AT THE CENTRE.

Proposal for unigameral Legislature rejected:

The Joint Parliamentary Committee carefully considered a suggestion that the Federal Legislature should consist of one chamber only and it however said "we recognise there is much to be said for that proposal also, but, on the whole, we do not feel able to reject the view which was taken by the statutory commission and which has been also consistently taken by, we think, no great bulk of both British and Indian opinion during the whole course of the Round Table Conferences, that the Federal Legislature should be bicameral. Certainly, a reversal of this view would be distasteful to nearly all, if not to all, the Indian States." 33

JOINT COMMITTEE'S DECISION:

The White paper had proposed that the members of the Council of State should be elected by the members of the Provincial Legislatures, including members of the provincial upper chambers where the Legislature was bicameral. The method of election proposed was that of the single transferable vote, a communal distribution of seats being thereby avoided; but special arrangements were contemplated for Europeans, Anglo-Indians and Indian XIs.

No provision was made for representation in the Council of State of special interests. The joint Parliamentary Committee accepted the proposals in principle, but if, the provincial Assemblies were to elect the Federal House of Assembly, it said that it would clearly be necessary to find different electoral colleges for the council of state. It seems to us they said that the only alternative electoral college is the provincial legislative council in those provinces where legislative council exists, and in the unicameral provinces they recommended that an ad hoc electoral college should be constituted of persons elected by an electorate broadly corresponding to the electorate for the legislative councils in bicameral provinces, the communal distribution of seats in this electoral college corresponding to that in the provincial assemblies.34

34 Report of the Joint Parliamentary Committee on Indian Constitutional Reforms—p. 112.
POWERS OF THE COUNCIL OF STATE AND RELATION BETWEEN THE TWO HOUSES

The white paper recommended equal powers to both Houses except in Finance in which Lower House was to retain Sovereign authority.

Parliamentary

The joint party Committee considered that the upper House should have wider powers in relation to finance and that it should be able, not only to secure that a rejected grant was reconsidered at joint session of the two houses, but also to refuse its assent to any Bill, clause or grant which had been accepted by the Lower House. It therefore suggested that all demands should be considered first by the Lower House and subsequently by the upper, and that the powers of each House in relation to any demand should be identical, and difference of opinion being resolved at a joint session to be held forthwith.

COUNCIL OF STATE--TO BE CONSTITUTED ON MORE PERMANENT BASIS.

The white paper proposed that each Council of State should continue for 7 years and each Federal House of Assembly for 5 years, power being reserved to the Governor-General in his discretion to dissolve both Houses either separately or simultaneously. The Joint Parliamentary Committee preferred a Council of state constituted on a more permanent basis, and accordingly recommended that it should not be subject to dissolution that its members should be elected for a period of 9 years and that 1/3 should retire and be replaced at the end of every third year. Special arrangements would in that event be required, they said for the first 9 year period following on its first constitution.

35 Ibid. p.117
36 Ibid. p.118
It would thus appear that the Joint Parliamentary Select Committee insisted on the Upper Chamber having larger powers than the Lower chamber, so as to be the chief support of that part of the central executive which was outside the final authority of the representatives of the people. That is, in a way the Committee recommended that the Council of State should even in the new political set-up continue to perform the same role as it had till then been doing under the Montagu-Chelmsford reforms. It thus concurred with the Government of India.

The British Government then prepared Bill embodying the White paper proposals as modified by the Joint Parliamentary Committee and introduced it into Parliament for enactment into Law. The Bill contained the proposal of a Federal Legislature with indirect election to both chambers. This was accepted by the House of Commons. But the whole scheme of indirect election was strongly condemned by Indian Public opinion mainly because it was a retrograde step as it substituted indirectly elected chambers in place of both chambers directly elected under the Act of 1919. In deference, perhaps, to this strong opposition and thus to allay the discontent, the House of Lords amended the Bill to provide for a directly elected council of state but retained indirect election for the House of Federal Assembly. The Bill when finally passed by the Parliament received the Royal assent on August 2, 1935 and became the Government of India Act of 1935.
We propose now to examine the nature, powers and functions of the Federal Legislature as projected in the Government of India Act, 1935, and the position of the Second Chamber, called the Council of State therein.

Section 13 of the Act states that the Federal Legislature "will consist of His Majesty, represented by the Governor-General, and two Chambers, to be known respectively as the Council of State and the House of Assembly."

The strength of the Federal Assembly was to be 375, of whom 250 were assigned to British India and 125 to the Indian States.

The seats for the British Indian Provinces were assigned thus:

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**Total...** 105(19) 82 6 4 8 8 11 7 9 10 250


The normal life of the Assembly was five years, but the Governor-General could dissolve it earlier.

The same section of the Act fixed the strength of the Upper Chamber, called the Council of State, at 260 of whom 156 were assigned to British Indian Provinces and 104 to the Indian States. The Following was the distribution of seats:
<table>
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<tr>
<th>Province or Community</th>
<th>General Seats</th>
<th>Sch. C.</th>
<th>Sikhs.</th>
<th>Mohammedans</th>
<th>Women Seats</th>
<th>Total Seats</th>
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<td><strong>49</strong></td>
<td><strong>6</strong></td>
<td><strong>150</strong></td>
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</table>

Note: (Here Scheduled Caste stands for Scheduled Castes.)

Six members from British India were to be nominated by the Governor-General.
Of the 104 seats assigned to the States, majority were assigned to individual States, while the rest were assigned to group of States formed into divisions for the purpose, because most of the States had very small population and as the number of such States had very small population and as the number of such States was over four hundred it was impossible to give representation to each individual State. The bigger and more important States were assigned seats thus: Hyderabad 5, Mysore 3, Kashmir 3, Gwalior 3, Baroda 2, Calcutta 2, Travancore 2, Cochin 2, Indore 2, Bhopal 2, Rewa 2, Udaipur 2, Jaipur 2, Jodhpur 2, Kolhapur 2, while these States were assigned in the Federal Assembly 16, 7, 4, 4, 3, 1, 5, 1, 2, 1, 2, 2, 3, 2, 1 respectively. Similarly for the Assembly representation the divisions (i.e. groups) of States were given representation. These assignments are detailed in First Schedule to the Government of India Act, 1935.

As already stated, the British Indian Provinces were to send their representatives to the Assembly through election by their respective legislatures, and to the Council of State through direct election by the voters on a very restricted franchise. Again, the States were free to send their representatives to both Chambers in such manner (whether nomination or election, etc) as each chose for itself. The members of the Council of State were to hold their seats for nine years, one-third of the Council be renewed every three years, and the first Council to be divided into three groups, the first retiring after the first three years, the second retiring after six years. Thus the Council was a continuous body.

Each House was to regulate its own procedure. The
Houses were to be summoned or prorogued by the Governor-General. The Assembly was to elect its Speaker and Deputy Speaker from amongst its own members, similarly the Council was to elect its President and Deputy President. Qualifications and disqualifications of candidates and members of the Houses were laid down. In each House, questions were to be decided by majority vote, the President or the Speaker was to have a vote only in case of equality of votes.

Section 30 of the Act provided:

(1) Subject to the special provisions of this Part of this Act with respect to financial Bills, a Bill may originate in either Chamber.

(2) Subject to the provisions of the next succeeding section, a Bill shall not be deemed to have been passed by the Chambers of the Legislature unless it has been agreed to by both Chambers, either without amendment or with such amendments only as are agreed to by both chambers.

In case of conflict between the two Chambers on any Bill the Act made the following provisions for resolving the same.

31--(1) After a Bill has been passed by one Chamber and transmitted to the other Chamber----

(a) the Bill is rejected by the other chamber; or
(b) the Chambers have finally disagreed as to the amendments to be made in the Bill; or
(c) more than six months elapse from the date of the reception of the Bill by the other Chamber without the Bill being presented to the Governor-General for his assent,

1 Section 19
2 Section 22
3 Section 24--29.
4 Section 23(1)
the Governor-General may, unless the Bill has lapsed by reason of a dissolution of the Assembly, notify to the Chambers, by message if they are sitting or by public notification if they are not sitting, his intention to summon them to meet in a joint meeting for the purpose of deliberating and voting on the Bill.

Provided that, if at appears to the Governor-General that the Bill relates to finance or to any other matter which affects the discharge of his functions so far as he is by or under this Act required to act in his discretion or to exercise his individual judgement, he may so notify the Chambers notwithstanding that there has been no rejection of or final disagreement as to the Bill and notwithstanding that the said period of six months has not elapsed, if he is satisfied that there is no reasonable prospect of the Bill being presented to him for his assent without undue delay.

The functions of the Governor-General in regard to this summoning of a joint session were to be performed by him in his discretion. But with regard to the proceedings at the joint session, rules were to be made by the Governor-General after consultation with the President of the Council of State and the Speaker of the Legislative Assembly.

6 Ibid. Sub-section(3)
7 Section 38(2) of the Act.
With regard to the method and manner of arriving at decisions at the joint sitting the Act provided:

If at a joint sitting of the two Chambers the Bill, with such amendments, if any, as are agreed to in joint sitting, is passed by a majority of the total number of members of both Chambers present and voting, it shall be deemed for the purposes of this Act to have been passed by both Chambers:

Provided that at a joint sitting—

(a) if the Bill, having been passed by one Chamber, has not been passed by the other Chamber with amendments and returned to the Chamber in which it originated, no amendment shall be proposed to the Bill other than such amendments (if any) as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned, only such amendments as aforesaid shall be proposed to the Bill and such other amendments as are relevant to the matters with respect to which the Chambers have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final.

PROCEDURE IN REGARD TO FINANCIAL MATTERS: The Act made special provisions in regard to financial matters. It provided that the Governor-General would cause to be laid before

8 Government of India Act, 1935. Section 31(4)
both Chambers of the Federal Legislature a statement of the estimated receipts and expenditure of the Federation for the year. This statement was to show clearly what sums were to be a charge on the revenues of the federation, and therefore not subject to the vote of the Legislature, and what sums were votable. Sub-section 3 of section 33 specified the expenditure to be charged on the revenues of the Federation, and any questions whether a particular expenditure was so chargeable or not, were to be decided by the Governor-General in his discretion. On such items the Legislature could debate but not vote.

Estimates of votable expenditure were required to be submitted in the form of demands for grants to the Federal Assembly and thereafter to the Council of State, and either Chamber had power to assent or refuse to assent to any demand subject to a reduction of the amount specified therein:

"Provided that, where the Assembly have refused to assent to any demand, that demand shall not be submitted to the Council of State, unless the Governor-General so directs and, where the Assembly have assented to a demand subject to the reduction of the amount specified there in, a demand for the reduced amount only shall be submitted to the Council of State, unless the Governor-General otherwise directs; and where, in either of the said cases, such a direction is given, the demand submitted to the Council of State shall be for such amount, not being a greater amount than that originally demanded, as may be specified in the direction." And further "If the Chambers differ with respect
to any demand the Governor-General shall summon the two
Chambers to meet in a joint sitting for the purpose of delibe-
rating and voting on the demand as to which they disagree, and
the decision of the majority of the members of both Chambers
present and voting shall be deemed to be the decision of the
two Chambers."12

Such was the scheme of the composition, functions
and powers of the Council of State in the Federal Legislature
as proposed in the Government of India Act, 1935. The Council
had the same powers as the Lower House, except that financial
measures for grants were to originate in the Assembly. The
Council of Ministers was responsible to the Assembly, by
convention, as the scheme of federation was based upon parlia-
mentary form of executive. From the federal point of view,
the Council neither gave equal representation to the units nor
did it represent the view of the units as corporate bodies,
because its composition was based on communal representation
besides representation of special interests. There was just one
slight recognition of the status of the Council, viz., the Act
stated that the federation was to come into existence only when
as many of the States had agreed to accede to it as were entitled
to half the seats (52 out of 104) assigned to them in the
Council of State.13 And as the requisite number of States had
not expressed their final willingness to enter the federation
till the outbreak of the World War II, the establishment of the

12 Ibid. 34(3)
Federation was postponed indefinitely. It is true that the intention of Act was the establishment of an upper chamber of the federal legislature, but the provisions for the constitution, composition and powers of the Council of State derived from most of the principles on which Upper Chambers in federal legislature have been set up in the world. Another incongruity that may be observed in the project was that while the Assembly members from British Indian Provinces were to be elected indirectly, the members to the Council of State were to be directly elected, just the reversal of the process operative in most federations. As the projected federation was not the work of Indian statesmen, but the forced scheme of an alien people, the Britishers, it is not at all surprising that the scheme suffered from serious unfederal features. How the Council should have played its role, and what might have been its contribution to the federal polity in India are questions the answers to which can be only mere conjectures as the scheme remained on paper. To speculate answers is unprofitable.